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(Additional Counsel Listed on Signature  
Page)

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

LIDIA RIVERA, EVERARDO RIVERA,  
ENRIQUE MOLINA, and TIMOTHY  
COOK, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY;  
SFPP, L.P. (formerly known as SANTA FE  
PACIFIC PIPELINES, INC.); KINDER  
MORGAN OPERATING L.P. "D", and  
KINDER MORGAN G.P., INC.,

Defendants.

CASE NO.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION**

**COMPLAINT**

Plaintiffs Lidia Rivera, Everardo Rivera, Enrique Molina, and Timothy Cook, for  
themselves and on behalf of a class of similarly situated landowners, pursuant to Rule 23  
of the Federal Rules of Civil Procedure, allege as follows:

**PARTIES**

1. Plaintiffs Lidia Rivera and Everardo Rivera are individual residents and

1 citizens of the State of California, and are fee owners of a parcel of land located in  
2 San Bernardino County, California, known as APN 0163011300000.

3 2. Plaintiff Enrique Molina is an individual resident and citizen of the State of  
4 California, and is fee owner of a parcel of land located in San Bernardino County,  
5 California, known as APN 0163011160000.

6 3. Plaintiff Timothy Cook is an individual resident and citizen of the State of  
7 California, and is fee owner of a parcel of land located in Contra Costa County, California,  
8 known as APN 1481800405.

9 4. Defendant Union Pacific Railroad Company ("Union Pacific"), successor to  
10 Southern Pacific Transportation Company, is a Delaware Corporation with its principal  
11 place of business in Omaha, Nebraska.

12 5. Defendant SFPP, L.P. ("SFPP"), formerly known as Santa Fe Pacific  
13 Pipelines, Inc., is a limited partnership. Upon information and belief, the partners of  
14 SFPP are citizens of the States of Texas and/or Delaware.

15 6. Defendant Kinder Morgan Operating, L.P. "D" ("Kinder Morgan D") is a  
16 limited partnership. Upon information and belief, the partners of Kinder Morgan D are  
17 citizens of the States of Texas and/or Delaware.

18 7. Defendant Kinder Morgan G.P., Inc. ("Kinder Morgan GP"), is a corporation.  
19 Kinder Morgan GP is incorporated in the State of Delaware and maintains its principal  
20 place of business in the State of Texas.

21 8. Defendants SFPP, Kinder Morgan D, and Kinder Morgan GP are  
22 collectively referred to herein as "the Pipeline Companies."

23 **JURISDICTION AND VENUE**

24 9. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(a), because this dispute  
25 is between citizens of different states, and the amount in controversy exceeds the sum of  
26 \$75,000, exclusive of interest and costs.

27 10. Additionally or alternatively, jurisdiction is proper pursuant to 28 U.S.C.  
28 § 1332(d), in that this is a class action in which the amount in controversy exceeds the

1 sum of \$5,000,000, exclusive of interest and costs, and at least one member of the  
2 proposed class is a citizen of a state different from at least one defendant.

3 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because a  
4 substantial part of the events giving rise to this dispute occurred in this District.

5 12. Additionally or alternatively, venue is proper in this District pursuant to 28  
6 U.S.C. § 1391(b)(1), because Defendants do business in the State of California and in  
7 this District and are subject to personal jurisdiction in the State of California. Defendants  
8 therefore reside in this District for venue purposes pursuant to 28 U.S.C. § 1391(c)(2).

9 13. The real property which forms the subject matter of this action is located in  
10 the State of California. The conduct complained of herein occurred, in whole or in part,  
11 within the State of California and/or was directed at residents, property owners and  
12 citizens of the State of California.

### 13 **INTRADISTRICT ASSIGNMENT**

14 14. This action should be assigned to the San Francisco/Oakland division of  
15 this Court because a substantial portion of the events giving rise to this action occurred in  
16 Contra Costa County.

### 17 **FACTUAL ALLEGATIONS**

18 15. With the onset of the Civil War, the need for a transcontinental railroad took  
19 on particular urgency and, starting in 1862, the government lavished sweeping land  
20 grants on the railroads in order to build several transcontinental railroads across the  
21 nation.

22 16. The initial Congressional land act was in 1862, (Railroad Act of 1862, Ch.  
23 120, § 3, 12 Stat. 489) and subsequent Congressional land acts were passed in 1864  
24 (Act of July 2, 1864, Ch. 216, §§ 1-22, 13 Stat. 356), in 1866 (30 U.S.C. § 21), and in  
25 1875 (General Right-of-Way Act of 1875, 18 Stat. 482, 43 U.S.C. § 934 et. seq.).

26 17. Defendant Union Pacific currently operates a railroad transportation system  
27 in 23 states west of the Mississippi river totaling roughly 32,400 miles, including within the  
28 State of California.

1           18.     Approximately half of the Defendant Union Pacific's tracks in the western  
2 part of the United States, including within California, were obtained by and through one of  
3 the Congressional land grants.

4           19.     These Congressional land acts merely granted the railroad a surface  
5 easement for its railroad purposes only, and expressly reserved and did not convey rights  
6 to the subsurface real property that is below the railroad's right-of-way.

7           20.     With respect to Congressional acts that pre-date 1871, the railroads were  
8 granted a surface right-of-way, and the right to extract from the subsurface only such  
9 minerals as were necessary for the construction and operation of the railroad. Under the  
10 pre-1871 Acts, when the land granted ceased to be used for railroad purposes, it was  
11 subject to reversion. Under the pre-1871 Acts, the railroads were prohibited from using  
12 the subsurface beneath their rights-of-way for commercial gain.

13          21.     With respect to the 1875 Congressional Act, the railroads were granted only  
14 a surface easement, and the right to use the subsurface only as necessary to support the  
15 surface operation of the railroad.

16          22.     The railroads' use and occupation of the surface created no right of  
17 possession in the subsurface.

18          23.     Additionally, the railroad acquired portions of its easement by private grants  
19 that limited its use for railroad purposes only.

20          24.     In the 1950's, Union Pacific's predecessor began constructing oil and gas  
21 pipelines to run below ground, beneath the railroad's right-of-way in these Western  
22 states, including within the State of California.

23          25.     The Pipeline Companies operate a pipeline system through the Western  
24 and Southwestern United States that is more than 3,000 miles in length, including  
25 approximately 1,100 miles within the State of California. The system distributes refined  
26 petroleum products (principally diesel, all grades of gasoline, and jet fuel).

27          26.     More than half the length of the pipeline is located beneath the railroad's  
28 surface easement, unlawfully utilizing the subsurface rights of the actual fee owners.

1           27.     In the mid-1950's, when construction of the pipeline began, Union Pacific's  
2 predecessor and the predecessor of the Pipeline Companies were sister subsidiaries of  
3 Southern Pacific Corporation.

4           28.     The railroad claimed for itself or purported to grant the right to construct an  
5 underground pipeline within the subsurface underlying the railroad's right-of-way.

6           29.     Pipelines were built underneath the railroad's rights-of-way irrespective of  
7 what ownership interest the railroad had actually acquired in this subsurface real property  
8 pursuant to pre-1871 Acts of Congress or the 1875 Act, and irrespective of the fact that  
9 the railroad only acquired a surface easement for its railroad purposes and has and had  
10 no legal rights whatsoever to occupy the subsurface or to grant subsurface easements  
11 for purposes of constructing or operating the pipeline.

12           30.     In or about 1983, the railroad and the predecessor of the Pipeline  
13 Companies entered into a ten-year lease agreement with respect to rents to be paid by  
14 the predecessor of the Pipeline Companies to the railroad for the operation of the pipeline  
15 within the subsurface of the railroad's right-of-way.

16           31.     In or about the late 1980's, the pipeline company was divested from the  
17 railroad, and the railroad and pipeline were no longer affiliated companies.

18           32.     In 1991, Union Pacific's predecessor sued the predecessor of the Pipeline  
19 Companies, alleging that the 1983 agreement should be rescinded because it was  
20 created while the companies were still sister entities and because it was not negotiated at  
21 arm's length, meaning that an artificially low rent amount was established for the pipeline  
22 easements.

23           33.     The 1991 lawsuit was settled in April of 1994 by virtue of a settlement  
24 agreement, which provided that the 1983 easement rental agreement was rescinded, the  
25 purported pipeline easement rights were confirmed, the parties compromised various  
26 existing claims, and the Pipeline Companies' predecessor paid over \$5 million in return  
27 for the railroad's dismissal of claims and causes of action.

28           34.     In July of 1994, the railroad and the Pipeline Companies' predecessor

1 entered into an amended and restated easement agreement ("AREA"), which purported  
2 to state that the railroad granted easements to the Pipeline Companies' predecessor for  
3 the transportation of its petroleum, natural gas, and other products, and reiterated a  
4 procedure and mechanism to determine the amount of rent that the Pipeline Companies'  
5 predecessor would pay the railroad for what purported to be perpetual easements in the  
6 subsurface of the right-of-way.

7       35. The next stage of litigation between Union Pacific and the Pipeline  
8 Companies commenced in 2004. In April of 2012, after more than 250 trial days, a trial  
9 court in Los Angeles, California found that pursuant to the AREA, the base annual rent  
10 owed from the Pipeline Companies to Union Pacific commencing on January 1, 2004 was  
11 \$14,080,487; that back rent due as of the time of the judgment was \$81,589,584; and  
12 that prejudgment interest was payable by the Pipeline Companies to Union Pacific in the  
13 amount of \$19,372,195.50.

14       36. This judgment was appealed by the Pipeline Companies. The California  
15 Court of Appeal for the Second District affirmed in part and reversed in part and  
16 remanded the decision of the trial court.

17       37. The California Court of Appeal ruled that neither the 1875 Act nor the pre-  
18 1871 Congressional Acts provided Union Pacific with sufficient property interests to allow  
19 the railroad to collect rent for the Pipeline Companies' use of the subsurface beneath the  
20 railroad's right-of-way.

21       38. The California Court of Appeal's ruling denotes that the fee owners of the  
22 right-of-way, these Plaintiffs and all putative Class Members, and not Union Pacific, had  
23 the sole and exclusive right to grant easements to the Pipeline Companies for a pipeline  
24 below the railroad's right-of-way and to collect rents from such use and occupancy by the  
25 pipeline.

26       39. Union Pacific's using or permitting the Pipeline Companies to use the  
27 limited railroad purpose right-of-way to carry petroleum through a subsurface pipe was an  
28 improper and illegal use outside the scope of Union Pacific's easement, which terminated

1 Union Pacific's easement.

2 40. The Pipeline Companies' use of the subsurface of the right-of-way to  
3 convey petroleum products may be severed from the surface railroad use and  
4 terminated.

5 41. The purported easement agreements granted by Union Pacific to the  
6 Pipeline Companies were and are invalid, and the Defendants have been trespassing on  
7 Plaintiffs' fee ownership in the subsurface of the right-of-way for over 50 years without  
8 payment to all of the adjacent landowners who own the fee in the right-of-way.

9 42. Defendants have been unjustly enriched for over 50 years by, in the  
10 railroad's case, collecting rent from the Pipeline Companies that it had no right to collect,  
11 and in the Pipeline Companies' case by developing a commanding share of the oil and  
12 gas market through the use and occupancy of the pipeline without the consent of the  
13 Plaintiffs and without compensation to them.

14 43. Defendants' wrongful conduct is ongoing and continuing, and has caused  
15 and continues to this day to cause harm to Plaintiffs.

16 44. Upon information and belief, as early as the 1950's, Union Pacific's  
17 predecessor-in-interest recognized that the railroad did not have sufficient legal title to  
18 purportedly grant an easement within the subsurface of the railroad right-of-way to  
19 construct and operate an oil and gas pipeline.

20 45. Upon information and belief, employees, agents, or representatives of  
21 Union Pacific's predecessor-in-interest recommended that the company justly  
22 compensate the true fee owners of the subsurface, the Class Members, which Union  
23 Pacific's predecessor-in-interest wrongfully failed and refused to do.

24 46. Upon information and belief, Union Pacific's predecessor knowingly  
25 engaged in a plan and scheme to unlawfully deprive the Class Members of their property  
26 rights by granting the right to construct an oil and gas line within the subsurface of the  
27 railroad's right-of-way in excess of the railroad's legal rights and without due notice or  
28 compensation to the Class Members for such use and occupancy.

1           47.     Upon information and belief, the Pipeline Companies have recognized for  
2 decades that the railroad lacked sufficient title to convey easements to the pipeline in  
3 tracts of land that were granted to the railroad pursuant to Congressional Acts, but have  
4 knowingly and deliberately transmitted petroleum products through the Class Members'  
5 real property and withheld rents from the lawful owners of the subsurface that they  
6 wrongfully use and/or occupy.

7           48.     Defendants are legally sophisticated entities that thoroughly researched,  
8 investigated, and assessed the nature of their purported legal rights and claim to the  
9 subsurface of the railroad's rights-of-way, and, upon information and belief, knew that  
10 they had no legal right to use, occupy, or profit from the subsurface real property that is  
11 owned by Plaintiffs.

12           49.     Defendants, at all times relevant hereto, misrepresented and/or concealed  
13 from Plaintiffs the facts regarding the presence of the pipeline on Plaintiffs' real property  
14 and the nature of the Defendants' supposed legal rights to use, occupy, or profit from the  
15 subsurface of the railroad's rights-of-way.

16           50.     Plaintiffs were wrongfully deterred from filing their causes of action against  
17 Defendants by virtue of the Defendants' wrongful conduct in concealing the true facts and  
18 wrongfully and dishonestly misleading Plaintiffs as to the nature of the Plaintiffs' rights,  
19 despite the Defendants' knowledge that they had no right to occupy the subsurface of  
20 Plaintiffs' real property.

21           51.     The pipeline was constructed underground, in some cases tens of feet  
22 below the surface.

23           52.     The Defendants' use and occupancy of the subsurface of the railroad's  
24 rights-of-way was hidden or concealed from the Plaintiffs.

25           53.     Either the construction of the pipeline was not visible to the Class Members  
26 at the time it was constructed, or it was not visually apparent to the Class Members that  
27 the pipeline was for the purposes of conveying petroleum products for the commercial  
28 gain of the Defendants as opposed to being for the structural or drainage needs of the



1 railroad attendant upon legitimate railroad operations.

2       54. Before the date of the California Court of Appeal's decision, Plaintiffs did  
3 not discover, and did not know of, facts that would have caused a reasonable person to  
4 suspect, both that they had suffered harm and that such harm was caused by the  
5 Defendants' wrongful conduct.

6       55. Before the date of the California Court of Appeal's decision, Plaintiffs were  
7 not entitled to begin and prosecute their claims herein.

8                               **CLASS ACTION ALLEGATIONS**

9       56. The representative Plaintiffs bring this class action on behalf of themselves  
10 and a class of similarly situated persons under Rule 23(a) of the Federal Rules of Civil  
11 Procedure, and the Class is initially defined as all landowners who own land in fee  
12 adjacent to and underlying the railroad easement under which the pipeline is located  
13 within the State of California.

14       57. The proposed Class is so numerous that joinder of all members is  
15 impracticable. The proposed Class will be made up of those fee landowners who owned  
16 parcels adjacent to the railroad's right-of-way where Union Pacific owns a surface  
17 easement for its railroad purposes and where the pipeline runs within the adjacent  
18 landowners' fee ownership in the subsurface of the right-of-way.

19       58. Prospective Class Members can be identified from the Defendants' own  
20 records and by a search of the records of the Tax Assessor and Recorder of Deeds in a  
21 county by county search in the State of California. The putative class will consist of  
22 hundreds or thousands of parcels and owners along the right-of-way and pipeline,  
23 including present and past owners who have sustained damages as a result of  
24 Defendants' unlawful conduct.

25       59. The claims of all of the named plaintiffs involve all of the same issues of law  
26 and fact as the proposed Class Members and are therefore common to each putative  
27 Class Member. The questions of law and fact common to the Class predominate over  
28 questions affecting only individual class members. These questions include, but are not

1 limited to:

2 a. Whether Union Pacific, in possession of merely a surface easement  
3 pursuant to Congressional land grants, improperly and illegally purported to grant  
4 subsurface easements for a pipeline without obtaining consent from Plaintiffs and without  
5 payment to Plaintiffs.

6 b. Whether Union Pacific improperly and illegally collected rents from the  
7 Pipeline Companies for the right to transmit petroleum products through the Plaintiffs' real  
8 property located in the subsurface beneath the railroad's surface right-of-way.

9 c. Whether Union Pacific's activities, specifically using or permitting the  
10 Pipeline Companies to use the limited railroad purpose right-of-way to carry petroleum  
11 through a subsurface pipe, was an improper and illegal use outside the scope of Union  
12 Pacific's easement which terminated Union Pacific's easement or whether such pipeline  
13 activity may be severed from the railroad use and itself terminated.

14 d. Whether the Pipeline Companies improperly and illegally occupied the  
15 subsurface of Plaintiffs' real property and transmitted petroleum products through  
16 Plaintiffs' real property.

17 e. Whether the Class is entitled to declaratory relief.

18 f. Whether the Class is entitled to damages for trespass.

19 g. Whether the Class is entitled to quiet their title in the real property, free and  
20 clear of any claim of right by the Defendants.

21 h. Whether the Class is entitled to eject the Defendants from the Class  
22 Members' real property.

23 i. Whether the Class is entitled to restitution and disgorgement of benefits  
24 unjustly obtained and retained by the Defendants.

25 j. Whether the Class is entitled to recover reasonable attorneys' fees,  
26 prejudgment interest, and the costs of suit.

27 60. The claims of the named Plaintiffs are typical of the claims of the proposed  
28 Class. The claims of the named Plaintiffs, as well as the claims of the proposed Class

1 Members, arise from the same set of facts and are premised upon the same legal  
2 theories under federal law, namely the scope of Congressional land grants, and the  
3 various state property laws. The named Plaintiffs and the proposed Class Members  
4 possess the same interests and they have suffered the same or similar injury —  
5 deprivation of their property rights. Further, the named plaintiffs and the proposed Class  
6 Members seek the same remedy — compensation for damages for the diminution in  
7 value in their property rights and for recovery of benefits that have been unjustly obtained  
8 by Defendants from the Class Members.

9 61. The Plaintiffs, as representative parties, will fairly and adequately protect  
10 the interests of the proposed Class. Plaintiffs have engaged competent and experienced  
11 counsel who will properly protect and advance the interests of the Class.

12 62. A Class Action is superior to any other available method for the fair and  
13 efficient adjudication of this controversy. Plaintiffs and the members of the Class have  
14 suffered irreparable harm as a result of Defendants' unfair and unlawful conduct.  
15 Because of the size of the individual Class Members' claims, few Class Members could  
16 afford to seek legal redress for the wrongs claimed herein. Absent a class action, the  
17 Class Members will continue to suffer losses and the violations of law described herein  
18 will continue without remedy and Defendants will be permitted to retain the proceeds of  
19 their misdeeds.

20 63. Further, the prosecution of separate actions by individual members of the  
21 Class would create a risk of inconsistent or varying adjudications with respect to  
22 individual members of the Class which could establish incompatible standards of conduct  
23 for Defendants or adjudication of individual claims would be dispositive of the claims of  
24 other Class Members not parties to this lawsuit and could substantially impair or impede  
25 their ability to protect their interests.

26 **FIRST CAUSE OF ACTION**  
27 **(DECLARATORY JUDGMENT)**

28 64. Plaintiffs reallege paragraphs 1-63.



1 possession of their subsurface rights in their property is an intentional act of trespass.

2 74. Union Pacific's continuing claim to possess the authority to grant  
3 easements in the subsurface underlying its right-of-way, to the Pipeline Companies and  
4 to others, is an ongoing invasion of Plaintiffs' fee ownership of the land without authority  
5 or permission and amounts to a continuing trespass on Plaintiffs' fee ownership in their  
6 land.

7 75. The Pipeline Companies constructed, operated, and still transport  
8 petroleum products through their pipeline beneath the subsurface of Union Pacific's right-  
9 of-way, which is actually owned by Plaintiffs.

10 76. Since Union Pacific did not own or acquire Plaintiffs' fee ownership interest  
11 in the right-of-way, including Plaintiffs' ownership in the subsurface of the right-of-way,  
12 and since Union Pacific had no authority to violate Plaintiffs' fee ownership by purportedly  
13 granting easements to the Pipeline Companies, the Pipeline Companies' transmission of  
14 petroleum products through their pipeline is an intended invasion of Plaintiffs' fee  
15 ownership interest in the exclusive possession of their property.

16 77. The Pipeline Companies' intentional invasion of Plaintiffs' interest in the  
17 exclusive possession of their subsurface rights in their property is an intentional act of  
18 trespass.

19 78. The Pipeline Companies' transmission of petroleum products through the  
20 pipeline is an ongoing invasion of Plaintiffs' fee ownership of the land without authority or  
21 permission and amounts to a continuing trespass on Plaintiffs' fee ownership in their  
22 land.

23 79. Defendants' trespass is continuing and could be abated.

24 80. Additionally or alternatively, Defendants' trespass is permanent, and has  
25 resulted in diminution of the value of the Plaintiffs' real property.

26 81. Due to the Defendants' trespass, Plaintiffs have suffered damages,  
27 including the invasion of their exclusive rights to possess and occupy their subsurface  
28 property.

1 82. Defendants' trespass is and was malicious, wanton, oppressive, and/or  
2 fraudulent in nature.

3 WHEREFORE, Plaintiffs pray for an award of damages resulting from Defendants'  
4 trespass since the 1950's and for continuing trespass, for the diminution in value of their  
5 property, for recovery of exemplary damages, and for attorneys' fees and the costs of this  
6 action.

7 **THIRD CAUSE OF ACTION**

8 **(EJECTMENT)**

9 83. Plaintiffs reallege paragraphs 1-82.

10 84. This is an action to recover possession of real property located in the State  
11 of California.

12 85. Plaintiffs are the fee title holders of Union Pacific's railroad right-of-way,  
13 including the subsurface of the right-of-way. Plaintiffs' fee ownership is burdened only by  
14 a limited easement for the use of the surface for railroad purposes only.

15 86. Union Pacific's using or permitting the Pipeline Companies to use the  
16 limited railroad purpose right-of-way to carry petroleum through a subsurface pipe was an  
17 improper and illegal use outside the scope of Union Pacific's easement, which terminated  
18 Union Pacific's easement.

19 87. The Pipeline Companies' use of the subsurface of the right-of-way to  
20 convey petroleum products may be severed from the railroad use and terminated.

21 88. As the fee title holders of the subsurface, Plaintiffs have the exclusive right  
22 to possession of the subsurface of the right-of-way.

23 89. Defendants have unlawfully occupied and are in possession of the  
24 subsurface beneath the railroad's right-of-way, without the consent of the Plaintiffs.

25 90. Defendants have failed and refused to cease their occupation of Plaintiffs'  
26 property.

27 91. Plaintiffs have sustained damages as a direct and proximate result of  
28 Defendants' wrongful occupation of the subsurface of the railroad's right-of-way.



1 property or any part thereof.

2 WHEREFORE, Plaintiffs demand judgment quieting title in the aforementioned  
3 subsurface real property solely in their respective names, free and clear of any claimed  
4 interest by Defendants, and each of them.

5 **FIFTH CAUSE OF ACTION**  
6 **(UNJUST ENRICHMENT)**

7 101. Plaintiffs reallege paragraphs 1-100.

8 102. Plaintiffs are the fee title holders of Union Pacific's railroad right-of-way.

9 103. Plaintiffs' fee ownership of the right-of-way includes the subsurface and  
10 aerial rights of the right-of-way, and Plaintiffs' land is now burdened with a surface  
11 railroad easement for railroad purposes only.

12 104. Union Pacific negotiated with the Pipeline Companies for rent payments by  
13 the Pipeline Companies for the use of the subsurface

14 105. Union Pacific realized monetary benefits and rent payments from the  
15 Pipeline Companies for those subsurface rights, without payment to the Plaintiffs.

16 106. Union Pacific was aware that it received the benefit of the use of Plaintiffs'  
17 subsurface property rights without compensating Plaintiffs.

18 107. Union Pacific does not own any title and does not have permission to use  
19 the subsurface or aerial rights above and below the right-of-way on the surface, but has  
20 received substantial monetary compensation and benefit without any the Pipeline  
21 Companies to the Plaintiffs, such that the retention of payments by Union Pacific made  
22 by the Pipeline Companies and their predecessors is unfair, unjust, and inequitable.

23 108. Since Union Pacific has realized enormous monetary benefit for the  
24 improper use of Plaintiffs' subsurface rights in their property, Union Pacific has been  
25 unfairly and unjustly enriched and owes restitution to the Plaintiffs for the use and rent  
26 collected by Union Pacific for illegal and unauthorized subsurface easements they  
27 granted to the Pipeline Companies and their predecessors.

28 109. Plaintiffs are entitled to damages for the value of all rents and monetary



1 benefits received by Union Pacific for all improper and illegal easements granted to the  
2 Pipeline Companies and their predecessors since the 1950's.

3 110. The Pipeline Companies, as successors to the original corporate affiliate of  
4 Union Pacific's predecessor, constructed a pipeline within Plaintiffs' property without  
5 notice to Plaintiffs, and without negotiating or paying for the right to use the subsurface of  
6 the right-of-way.

7 111. Upon information and belief, the Pipeline Companies' predecessor-in-  
8 interest would have faced substantial additional cost and delay if it had fairly negotiated  
9 with and compensated the owners of the property at issue at the time the pipeline was  
10 constructed, and unjustly, unfairly, and inequitably received the benefit of the use of the  
11 property.

12 112. The Pipeline Companies, as corporate affiliates of the railroad, occupied the  
13 subsurface of the railroad's right-of-way for decades by payment of rents that were less  
14 than the fair market value that would have been charged in an arms-length transaction.

15 113. By virtue of the wrongful acts herein described, the Pipeline Companies  
16 established a considerable market share and dominance of the oil and gas market, with  
17 more than 50% of their pipeline in the Western and Southwestern United States passing  
18 within Union Pacific's right-of-way.

19 114. The Pipeline Companies realized enormous cost savings and profits  
20 derived from operating the pipeline through this territory without payment of just  
21 compensation to the property owners, the Plaintiffs.

22 115. The Pipeline Companies have enjoyed an unjust and unfair competitive  
23 advantage over other pipeline companies who properly paid for and secured the right to  
24 build their pipelines.

25 116. The Pipeline Companies are aware of the benefits they have received from  
26 and at the expense of the Plaintiffs.

27 117. Since the Pipeline Companies have realized enormous monetary benefit for  
28 the improper use of Plaintiffs' subsurface rights in their property, the Pipeline Companies

1 have been unfairly and unjustly enriched and owe restitution to the Plaintiffs for the use  
2 and rent of Plaintiffs' real property.

3 118. Plaintiffs are entitled to damages for the value of all monetary benefits  
4 received by the Pipeline Companies for their improper and illegal occupation and use of  
5 the subsurface of the rights-of-way since the 1950's.

6 119. Plaintiffs lack an adequate remedy at law.

7 120. Defendants' conduct is and was malicious, wanton, oppressive, and/or  
8 fraudulent in nature.

9 WHEREFORE, Plaintiffs demand recovery of benefits that were unjustly obtained  
10 and retained by Defendants, for a constructive trust in favor of Plaintiffs to be placed  
11 upon the benefits and proceeds received by Defendants as a result of their violation of  
12 the Plaintiffs' rights, for recovery of exemplary damages, for Plaintiffs' costs and fees, and  
13 for any other and further relief as the Court may deem just and proper.

#### 14 **SIXTH CAUSE OF ACTION**

#### 15 **(VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq.)**

16 121. Plaintiffs reallege paragraphs 1-120.

17 122. The acts and practices of Defendants as alleged herein constitute unlawful  
18 business acts and practices within the meaning of Cal. Bus. & Prof. Code §§17200, et  
19 seq.

20 123. Defendants have engaged in "unfair" and/or "unlawful" business acts and  
21 practices as described above by, without limitation, depriving Plaintiffs of their legal rights  
22 in and to the subsurface real property and withholding rents from the Plaintiffs who are  
23 the lawful owners of that property. Defendants' unfair and unlawful business acts and  
24 practices, as described herein, constitute trespass and unjust enrichment, among other  
25 things.

26 124. The above-described unlawful and unfair business acts and practices  
27 continue to this day. Defendants have received unlawful benefits from Plaintiffs and have  
28 failed to provide full restitution and disgorgement of all ill- gotten monies either acquired

1 or retained by Defendants as a result thereof, as appropriate under California law.

2 WHEREFORE, Plaintiffs pray for the restitution of benefits and profits that were  
3 unfairly and/or unlawfully obtained by the Defendants, in an amount to be determined by  
4 a jury, and, further, an order enjoining Defendants from such unlawful and unfair conduct  
5 in the future pursuant to Cal. Bus. & Prof. Code § 17203.

6 **SEVENTH CAUSE OF ACTION**

7 **(ACCOUNTING)**

8 125. Plaintiffs reallege paragraphs 1-124.

9 126. As set forth above, Defendants have received unlawful benefits from  
10 Plaintiffs.

11 127. Plaintiffs are entitled to an accounting from Defendants of these benefits  
12 and profits.

13 128. Plaintiffs lack an adequate remedy at law.

14 WHEREFORE, Plaintiffs pray for an accounting by Defendants of benefits and  
15 profits that were unfairly and/or unlawfully obtained from Plaintiffs by the Defendants.

16 **DEMAND FOR TRIAL BY JURY**

17 Plaintiffs demand a trial by jury with respect to all claims so triable.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,  
20 pray for judgment against Defendants as follows:

21 A. For an order certifying this class as a Class Action and appointing Plaintiffs  
22 and Plaintiffs' counsel to represent the Class;

23 B. For a declaration that (1) Defendant Union Pacific lacks sufficient legal right  
24 or title in the subsurface of its right-of-way to grant easements or to collect rents  
25 associated with the occupancy of the subsurface, and (2) Defendant Pipeline Companies  
26 lack sufficient legal right or title to occupy the subsurface of the railroad's right-of-way;

27 C. For damages, restitution, and/or disgorgement of benefits and/or profits  
28 according to proof;

1 D. For exemplary damages based on the Second Cause of Action for  
2 Trespass and the Fifth Cause of Action for Unjust Enrichment;

3 E. For possession of the subsurface real property;

4 F. For an order quieting title in the subsurface real property in Plaintiffs'  
5 respective names, free and clear of any claimed interest by the Defendants;

6 G. For a constructive trust in favor of Plaintiffs to be placed upon the benefits  
7 and proceeds received by the Defendants;

8 H. For an accounting by Defendants of all benefits and profits that were  
9 unfairly and/or unlawfully obtained from Plaintiffs by the Defendants;

10 I. For reasonable attorneys' fees;

11 J. For pre-judgment interest;

12 K. For costs of suit; and

13 L. For an order providing such other and further relief as this Court deems just  
14 and proper.

15 DATED: April 23, 2015

HANSON BRIDGETT LLP

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